

# Subpart CC Compliance Assistance

*Air Emission Standards for Tanks, Surface Impoundments, and Containers*

September 1997  
Waste Management Division  
Final Version

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EPA Region 4

Enforcement & Compliance Branch

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## Subpart CC Compliance Assistance

# TABLE OF CONTENTS

### **I. Introduction**

Compliance Assistance as part of the continuum of Compliance Assurance

### **II. Subpart CC: Role of RCRA Compliance & Field Personnel In Compliance Assistance**

#### **A. Compliance Assurance Options**

1. Accomplishments to date
2. Implementation of Regional Strategy
  - *Offering On-site Assistance Through Audits*
  - *Informal/Formal Enforcement*
3. *Long Range Subpart CC Planning*
  - *Targeting Industries Specific to Your State and Region*
  - *OECA FY-98/99 MOA Guidance*

#### **B. Resources for Field Personnel**

#### **C. Audits and Compliance Evaluation Inspections**

#### **D. Desired Outcomes**

#### **E. Success or Failure or Other**

# **I Introduction**

Throughout RCRA's history, industry has wanted assistance in coming up to speed with new rules and regulations, and has actively sought a partnership role with the States and Federal governments in developing and implementing the new rules. With President Clinton's signing of the 1995 Regulatory Reform Initiative, EPA has been directed to reduce the burden on companies in complying with environmental regulations and policy. EPA has notably worked on Headquarters, Regional and at State/Local levels to forward the concept of "Compliance Assistance".

Compliance assistance represents the real effort and commitment by EPA, States and Industry to work together in partnership to achieve compliance with environmental regulations and policy. Compliance assistance is one additional tool the Agencies have to encourage compliance, and do so without needing to rely on the traditional compliance-to-enforcement strategy. EPA believes that we can achieve wide-scale compliance with program requirements when "the statutory and regulatory requirements are clearly articulated, and are widely known and understood within the regulated community."

## **II Subpart CC: Role of RCRA Compliance & Field Personnel In Compliance Assistance**

Compliance assistance for Subpart CC should be considered a three-fold approach, where each responsible regulator has a significant role. First level of assistance will be at the on-site level, specifically targeted to industry during either audits or compliance evaluation inspections (CEI). The second level of assistance will be from central offices, where mass-mailings of informational documents will be performed. Additionally, we expect that telephone inquiries and written inquiries will be handled at this level. The third level of assistance will be from EPA Headquarters and Region 4 offices, where training programs, guidance documents and technical assistance will be provided. We do not anticipate any obstacles which would keep us from implementing all three strategies simultaneously. Therefore, we encourage concurrent implementation where practical.

Since Subpart CC was promulgated under HSWA, EPA Region 4 will initially be responsible for all three levels and has already been performing Subpart CC evaluations. We expected that Subpart CC compliance assistance will be implemented by EPA, and that all three approaches would be implemented independently as resources are available. Under this three level approach, EPA compliance personnel will have the responsibility of working with facility personnel, helping individual state inspectors become familiar with the workings of Subpart CC. As a side note, we expect that each state will continue the pioneering work in compliance assistance already notable in our region. In time, each state will have Subpart CC as part of the compliance assistance program. Region 4 recommends the following options for compliance assistance:

### **A. Compliance Assurance Options**

#### **1. Accomplishments to date**

Region 4 will continue to provide in-house technical assistance through telephone calls and follow-up. The in-house technical assistance will be available to industry, regulators, and stakeholders. This form of compliance assistance shall not be advertised other than through word-of-mouth, and by suggestion during compliance inspections, or assistance audits.

E&CB is evaluating BRS data pulls for each of the eight states to in order to define a suspected existing universe which might be subject to Subpart CC. Once the analysis is complete, the information shall be disseminated to States and EPA coordinators, to be used according to the needs of a specific State. Additionally, Subpart CC audits are being tracked through RCRIS, providing a tally of sites which are confirmed as Subpart CC regulated (see section II.E for further information).

Region 4 has developed handouts, rule summaries, and flow diagrams which assist in understanding Subpart CC. EPA had considered mass mailings to industry, however, this is on hold at this time.

hold at this time. We expect to develop packages and send out after litigation is settled. Existing informational pamphlets will be made available to State & Federal compliance personnel to assist in implementing Subpart CC. These pamphlets could be used in site-specific instances, where the compliance officer believes a substantial benefit could be derived by the facility.

We have offered training to both State and Federal compliance officers on the technical aspects of the rule. Additionally, a train-the-trainer session was performed, where all states within Region 4 attended. If the compliance officer shall take the time to learn the facility and offer information or offer to assist, then we've taken the first step in compliance assistance.

## 2. Implementation of Regional Strategy

Under the compliance assurance program, compliance assistance is seen as an additional tool for EPA to use to establish and maintain compliance in the regulated community. The intent of compliance assistance is to entice the regulated community into compliance. EPA is doing business in a new way. This new element of compliance assurance does not have the wide-spread understanding among the practioners. Compliance assistance is assistance first, then enforcement if necessary to ensure compliance within the regulated community.

We are suggesting that States and Federal compliance officer combine audits with routine inspections. We also recommend that issues under Subpart CC be subjected to compliance assistance methods and be handled through oral and written recommendations for return to compliance. There is a need for EPA (or authorized State) to follow-up to ensure that the facility is making the effort to return to compliance. If thirty days pass without the facility returning to compliance with Subpart CC, then referral to enforcement should be evaluated.

Region 4 will conduct compliance assistance audits at all sites inspected by EPA personnel in FY 1997. Below is the recommended protocol for implementing compliance assistance through the remainder of FY-97. Not all of the elements will be applicable, but each should be considered as you work with a facility on Subpart CC.

- a. Offering On-site Assistance Through Audits (Authorized Agency is lead in activities): Evaluate facility's current compliance status for Subpart CC  
Look for solutions to address noncompliance and offer the solution as nonbinding.  
Follow up with the facility to see if they have returned to compliance  
If facility has not returned to compliance, then evaluate prospect for referral to enforcement as required under the ERP.  
[Region 4 approach will be to offer assistance during the compliance audit. Due to regulatory and financial constraints, Region 4 will be unable to offer on-site assistance by request.]

- b. Informal/Formal Enforcement If No Return to Compliance (Authorized Agency is lead in activities and is encouraged to consult with the other Agency)

Evaluate progress made by facility in returning to compliance.

Will compliance be enhanced with Agency's use of additional tools (i.e., enforcement action).

What Constitutes Enough Attempts To Get It Right?

Use the ERP to decide which option is most appropriate for compliance assurance:

- I. Continued compliance assistance
- ii. Warning letter
- iii. Notice of Violation (Show Cause Conference)
- iv. Formal enforcement under § 3008(a)
- v. Enforcement discretion

[Region 4 will offer compliance assistance for Subpart CC violations. Any additional violations will be evaluated and referred to the appropriate authorized program for evaluation under the enforcement response policy.]

### 3. Long Range Subpart CC Planning

Long range planning requires that we establish the universe (on-going), evaluate the compliance rate (on-going), and measure the effectiveness of compliance assistance. During FY-97 we are establishing the universe and evaluating the rate of compliance. Where violations are being found, we are issuing opportunities for compliance assistance which outlines what is required to return to compliance. FY-98 and FY-99 will be focused on sectors, and may quite possibly be different for each state of interest. The following items will be considered for the FY-98/99 targeting efforts.

#### a. Targeting Industries Specific to Your State and Region

- i. Which industries contribute the most air emissions for each state.
- ii. One SIC code is not applicable for all states.
- iii. BRS data for each state, by SIC, by waste stream for probable evaluation

#### b. OECA guidance for the MOA

To the greatest degree practicable, FY-98/99 will be compliant with the OECA MOA Guidance. Therefore, targeting for FY98/99 should consider the following universe and industry sectors:

- i. Combustion/Incinerator Universe
- ii. Fuel Blender Universe

- iii. LDR Targeted Sites-specifically the dilution prohibition under Part 268 as applied to generators, & TSDF.
- iv. Petroleum Refining SIC 2910
- v. Industrial Organic Chemical Manufacturing SIC 2869/2861/2865
- vii. Chemical Preparation SIC 2899

OECA MOA guidance suggests that CBEP is an important factor and may overlap with any of the targeted universe/industry sectors. Policy-makers and State Coordinators will plan FY-98/99 compliance targets for Subpart CC around these specific areas.

Since compliance assistance must be measurable, we will evaluate the program effectiveness on a quarterly basis. We will use the RCRIS database as the primary means of inventorying compliance assistance audits. EPA personnel must code a CAV for any Subpart CC evaluation and audit. The E&CB will evaluate the data to specifically look at the number of evaluations made, compliance status, actions taken, and number of sites that returned to compliance.

#### B. Resources for Field Personnel

EPA has developed several documents which are currently available for distribution to industry and other stakeholders. We have developed a compliance inspection checklist, regulatory flow diagrams, and are developing compliance assistance handouts for industry. The intent of these documents is to offer regulators and industry information which will help bridge the gulf of mistrust between the two sides. These documents will not create trust, but should foster trust in the audit process. Listed below are the documents available and under development:

Subpart CC Compliance Evaluation Checklist<sup>1</sup>  
Subpart CC Regulatory Flow Diagrams  
Subpart CC Regulatory Summary  
Subpart CC Frequently Asked Questions (FAQ)<sup>2</sup>

Region 4 also has copies of consolidated regulations for Subpart CC. Since Subpart CC has been amended numerous times, and substantial changes have been made since the initial promulgation, most regulatory personnel do not have a complete consolidated copy of the regulations. Additionally, EPA Subpart CC workgroup maintains a large reading file on Subpart CC and can act as an information resource. State Agencies will be mailed the updated information once it is made available. EPA is also working to include Subpart CC documents on the Region 4 home page of the internet. Any documents available on the internet will be standardized along HTML, PDF, and ASCII formats.

<sup>1</sup> Draft checklist now available

<sup>2</sup> Under development by EPA Region 4 & Headquarters

### C. Audits and Compliance Evaluations

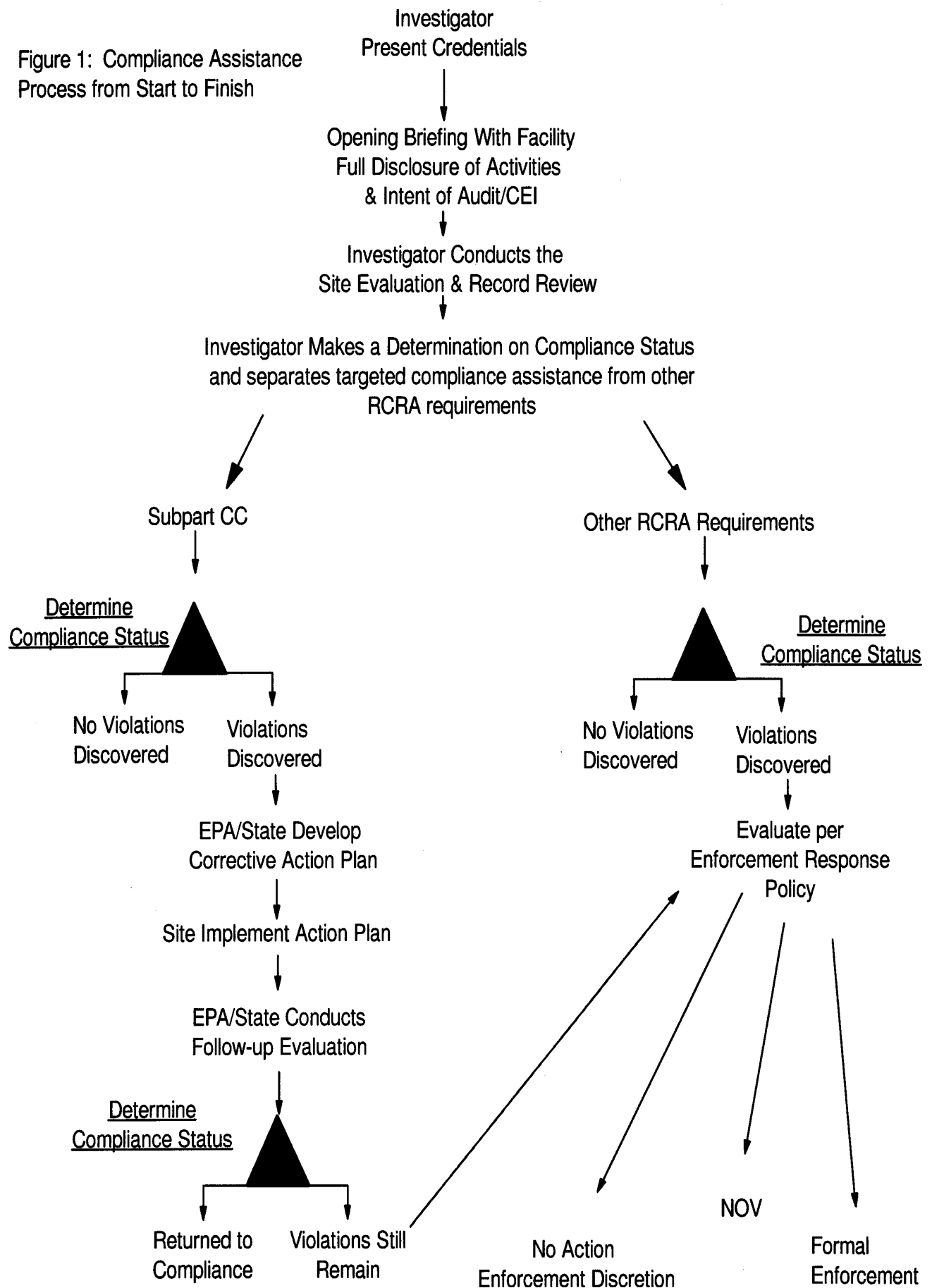
In section II.A.2, we outlined a strategy of conducting compliance assistance audits while we are conducting routine compliance evaluation inspections. Subpart CC is specified as a priority item in the OECA MOA guidance. However, due to increasing workload and decreasing resources, E&CB advocates that existing resources should be optimized. Therefore Subpart CC audits should be conducted concurrently with any CEI(s) performed by EPA and/or authorized States. When conducting audits and CEIs, we advocate that the investigator/auditor be as open and up-front as possible. We believe that ***you will need to state your intentions, what the audit covers, what the audit excludes***, what the CEI covers, and the general method you will use to respond to perceived violations. We have to delineate what is compliance assistance, and what is compliance assurance so as not to compromise possible enforcement action later on.

We cannot offer total umbrella coverage for all RCRA issues, unless it is part of a bigger compliance assistance program offering for business such as targeted small business operations. Also, the ideas and concepts stated here are only for Subpart CC and really should not be used for any other compliance assistance programs. Compliance assistance is the only tool recommend at this time for Subpart CC issues. Normal compliance evaluation tools and techniques are recommended and advocated for any other RCRA requirements such as LDR, waste determination and the BIF Rule. Since the rule was effective on December 6, 1997, the duration of compliance assistance as covered by this guidance will be for one year. Therefore, compliance assistance through audits will cease for Subpart CC after December 6, 1997. Compliance assistance as a informal program may continue only as a means of disseminating information to industry and state programs.

Since Subpart CC allows for phased implementation, the most common violation will probably be one where the facility failed to create a schedule of implementation. After December 6, 1997, more of the substantive requirements become effective, making the inspections much more time-consuming, complex, and tedious.



Figure 1: Compliance Assistance  
Process from Start to Finish



The flow diagram represented in figure 1 above represents the concepts of dual audit and compliance evaluation. Again, the recommended procedure is to fully inform and involve the facility as to the goal of the audit and compliance evaluation. Clearly, you must state the limits of the audit, and let the facility know that the traditional compliance evaluation is also being performed. Finally, the out briefing should include as full disclosure as possible, including any areas of concern, and the expected follow-up actions if any.

D. Desired Outcomes: Compliance Assistance Reaching for Goals

The goal of RCRA is protection of human health and the environment. Traditionally, compliance assurance, especially enforcement, was our way of obtaining a degree of protection. We reach our desired outcome if we have a significant number of facilities in compliance with the regulations. Under our compliance assistance program for Subpart CC, we want to avoid initial enforcement upon discovery of violations in the first year of implementation. Therefore, for the period December 1996 through December 1997, we are deferring to compliance assistance methods for violations of Subpart CC for certain sets of conditions.

On-site compliance assistance should follow the Figure 1, Compliance Assistance Process. In essence, the process in the worst-case scenario encompasses five basic steps.

- a. Site audit-Determine applicability of Subpart CC  
Evaluate what is regulated, and what events have been completed.
- b. Determine compliance status with the requirements of Subpart CC
- c. If violations exist, write a compliance assistance letter with a corrective action plan outlining the requirements and timeline for completion.
- d. Follow-up with the facility by inspecting the efforts under Subpart CC, to determine whether or not the site has returned to compliance.
- e. If violations remain after the deadline, evaluate whether or not the violations are sufficient to initiate either informal or formal enforcement action.

EPA guidance on compliance assistance recommends that action plans to return to compliance have a thirty day limit. There may be site specific conditions which dictate a longer period for compliance to occur. A longer time frame for compliance should only be used if requested by the facility, and if the facility can justify that it would be technically improbable to meet a thirty day time line.

Regardless of the timeline established in the letter of compliance assistance, EPA or the Authorized Agency must conduct a follow-up evaluation. The purpose is to determine independently that the site has returned to compliance and had implemented the corrective action plan as specified in the letter of compliance assistance. Self-certification of compliance by the facility is not sufficient proof of return to compliance. A self-certification is acceptable only as a means of determining when to conduct follow-up of the Subpart CC violations.

E. Success or Failure or Other

Measuring the effectiveness of a program is necessary since it allows us to determine whether or not the program is returning results for our effort. Our measurement system for tracking and reporting is the RCRIS database. EPA and the States will use the CAV code for Compliance Assistance Visits to document audits on the Compliance Monitoring & Enforcement Log (CMEL). For the situations where an audit and CEI is conducted, the investigator will submit two CMELs to document the inspection.

An action plan when specified as a remedy will have to be tracked under the violation data area of the CMEL. The investigator will have to specify the scheduled return to compliance for the action plan and provide sufficient comments to assist in tracking the success of audits.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
100 ALABAMA STREET, S.W.  
ATLANTA, GEORGIA 30303-3104

YELLOW

JUN 24 1997

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

4WD-RCRA

Mr. Greg Long  
Ford Motor Company, Louisville  
Assembly Plant  
Post Office Box 32990  
Louisville, Kentucky 40232

SUBJ: Compliance Assistance Opportunity for Ford Louisville Assembly Plant  
Subpart CC Implementation Schedule Violation  
KYD 071 315 899

Dear Mr. Long:

On April 22, 1997, the U.S. Environmental Protection Agency (EPA), and Kentucky Department for Environmental Protection (KDEP), conducted an inspection of the Ford Louisville Assembly Plant (Ford-LAP) located at Fernvalley Road, Louisville, Kentucky. During the inspection, EPA audited Ford-LAP's efforts to comply with Subpart CC, Air Emission Standards for Tanks, Surface Impoundments and Containers. The Agency discovered that Ford-LAP was in violation of Subpart CC by failing to establish an implementation schedule for installation of control equipment on the purge solvent tank.

Subpart CC became effective on December 6, 1996, and was promulgated pursuant to the Hazardous and Solid Waste Amendments (HSWA) of 1984 to the Resource Conservation and Recovery Act (RCRA). Regulations promulgated under HSWA are effective immediately in all states, and are enforced by EPA until such time as the state becomes authorized for those provisions. The Commonwealth of Kentucky has not yet received authorization for implementation of Subpart CC, therefore EPA has direct responsibility for implementing the requirements.

Recognizing that the Subpart CC requirements are new and in order to facilitate compliance with these regulations, EPA is offering Ford-LAP an opportunity to remedy its noncompliance. This opportunity is specifically limited to the violation cited herein and remains in effect only so long as Ford-LAP responds to requests by EPA in a timely manner. Submissions must be deemed to be good faith efforts towards compliance by EPA. If Ford-LAP responds in a timely and good faith manner, EPA will undertake to provide Ford with compliance assistance intended to remedy the violation at issue. This offer of compliance assistance does not shield a facility from enforcement actions for violations which are outside the scope of the compliance

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assistance offering. If Ford-LAP fails to make a good faith effort to comply with the compliance assistance program as outlined in this letter, then Ford-LAP may be subject to enforcement action. Therefore, for Ford-LAP to be eligible, the following specific items must be addressed within thirty days of receipt of this letter:

Ford-LAP shall develop a Subpart CC Implementation Schedule which contains:

1. Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment,
2. Initiation of on-site installation of the control equipment,
3. Completion of the control equipment installation, and
4. Performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart.

If you decide not to accept this offer, then EPA may proceed with enforcement action against Ford-LAP as authorized under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), including the assessment of appropriate civil penalties.

If you should have any questions regarding the requirements for returning to compliance and the compliance assistance letter, please contact David Langston, at 404-562-8588.

Sincerely,

Jeaneanne M. Gettle, Chief  
North Enforcement and Compliance  
Section  
Enforcement and Compliance Branch

cc: Leslie Henney, KDEP-Louisville Field Office  
Rob Daniel, Director KDEP

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LANGSTON GETTLE

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6/24/97

*JMG*  
6/24/97



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COMMUNICATIONS SECTION

VEHICLE OPERATIONS  
FORD MOTOR COMPANY

LOUISVILLE ASSEMBLY PLANT  
P.O. BOX 32990  
LOUISVILLE, KENTUCKY 40232

July 28, 1997

Ms. Jeaneanne M. Gettle, Chief  
North Enforcement and Compliance Section  
Enforcement and Compliance Branch  
United States Environmental Protection Agency  
Region 4  
Atlanta Federal Center  
100 Alabama Street, S.W.  
Atlanta, Georgia 30303-3104

Subject: Compliance Assistance Opportunity for the Ford Louisville Assembly Plant  
Subpart CC Implementation Violation  
KYD 071 315 899

Dear Ms. Gettle:

Thank you for the opportunity to establish a compliance implementation schedule for installation of required control equipment on the waste purge solvent tank. At this time, we believe all appropriate compliance measures have been taken to remedy Subpart CC compliance issues raised during the joint Kentucky DEP and EPA Region 4 inspection performed on April 22, 1997. Our actions are identified below.

- 1) Analyses conducted on various waste purge solvents contained in 90 day accumulation tanks at Ford facilities indicate that Tank Standards Level 1 Controls are applicable for these tanks. Accordingly, the Louisville Assembly Plant has installed a combination vent/flame arrestor on the tank vent line and has initiated annual tank inspections per Subpart CC requirements. Installation of this vent was completed on July 11, 1997.

We trust that this response sufficiently addresses the concerns outlined in your Compliance Assistance Letter dated June 24, 1997. Should you have any questions, or require additional information, please contact Greg Long of my staff at (502) 364-3751.

Sincerely,

R.J. Kurtz  
Plant Manager